

RECORDATION NO. 7642 Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of April 15, 1974

among

GENERAL MOTORS CORPORATION (Electro-Motive Division)
as VendorNORTH WESTERN LEASING COMPANY
as Vendee

and

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY
as Guarantor

AGREEMENT AND ASSIGNMENT

Dated as of April 15, 1974

between

GENERAL MOTORS CORPORATION (Electro-Motive Division)

and

FIRST NATIONAL CITY BANK

CONDITIONAL SALE AGREEMENT (hereinafter called Agreement) dated as of April 15, 1974 among GENERAL MOTORS CORPORATION (ELECTRO MOTIVE DIVISION) a Delaware corporation (hereinafter called the Vendor or Builder as more particularly set forth in Article 24 hereof), CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Guarantor or the Sublessee) and NORTH WESTERN LEASING COMPANY, a Delaware corporation (hereinafter called the Vendee).

WHEREAS, the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex A hereto (hereinafter called the Equipment); and

WHEREAS, ALLIED PRODUCTS FINANCE CORPORATION (hereinafter called the Lessee) desires to lease the Equipment from the Vendee; and

WHEREAS, the Vendee is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex B (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

WHEREAS, the Lessee is executing a sublease of the Equipment as of the date hereof to the Sublessee in substantially the form annexed hereto as Annex C (hereinafter called the Sublease);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex A hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion

of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment (except to the extent, if any, referred to in Article 6 hereof) will be new railroad equipment.

ARTICLE 2. Inspection and delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places within the United States of America specified in Annex A hereto (or if Annex A does not specify a place or places, at the place or places within the United States of America designated from time to time by the Vendee), freight charges, if any prepaid, in accordance with the delivery schedule set forth in Annex A hereto.

The Builder's obligation as to time of delivery is subject however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before the Cut-Off Date referred to in Article 3 hereof shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Guarantor shall be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if

and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Guarantor shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Guarantor shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Guarantor) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Guarantor) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee on the date of such Certificate of Acceptance and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof. The Builder and the Guarantor represent and warrant to, and agree with, the Vendee that no unit of the Equipment will be delivered to or used by the Guarantor or any other persons unless the same shall first be duly subjected to this Agreement and the Lease.

ARTICLE 3. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex A hereto. Such base price or prices are subject to such

increase or decrease as is agreed to by the Builder, the Vendee and the Guarantor; provided, however, that, following any assignment by the Builder of any of its rights hereunder, any such increase in price must be reasonably determined in an arms length transaction. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, and the term "Invoiced Purchase Prices" as used herein shall mean the aggregate Purchase Price for units of Equipment as set forth in the Builder's invoice or invoices therefor. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Price for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$10,000,000 (or such higher amount as the Vendee with the consent of the Guarantor may at its option agree to), the Builder (and any assignee of the Builder) and the Guarantor will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices under this Agreement to not more than \$10,000,000 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly or, if the Builder and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for (and payment made as to the initial installment due the Builder as provided below) in not more than two groups of units of the Equipment delivered to and accepted by the Vendee (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date not earlier than September 2, 1974, or later than December 31, 1974 (hereinafter called the Cut-Off Date), occurring not more than ten business days following presentation by the Builder to the Vendee and the Guarantor of the invoice and the Certificate or Certificates of Acceptance for the Group, as shall be fixed by the Guarantor by written notice delivered to the Vendee and the Vendor at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois or New York, New York are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash

to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, delivered to and accepted by the Vendee hereunder and interest as follows:

1. The Vendee shall pay the aggregate Purchase Price of all Equipment settled for hereunder in twenty (20) equal semi-annual installments payable on July 1 and January 1 of each year commencing July 1, 1975 to and including January 1, 1985 (subject to the privilege of prepayment as hereinafter provided.)

2. The indebtedness hereunder for the unpaid balance of the aggregate Purchase Price of the units of Equipment in each Group shall bear interest from the Closing Date for such Group, and the Vendee shall pay such interest quarterly on January 1, April 1, July 1 and October 1 of each year (such dates being hereinafter called the "Interest Payment Dates") commencing January 1, 1975 to and including January 1, 1985, as follows:

(a) on January 1, 1975 interest accrued from and including the Closing Date to but not including January 1, 1975, at the rate per annum of 116% of the Base Rate (as hereinafter defined) in effect on such Closing Date.

(b) on each Interest Payment Date thereafter, interest accrued but not including such Interest Payment Date from and including the preceding Interest Payment Date, at the rate per annum determined by multiplying the Base Rate in effect on the preceding Interest Payment Date by the percentage shown below for the subject Interest Payment Date.

| <u>Interest Payment Dates, Inclusive</u> | <u>Percentages</u> |
|--|--------------------|
| April 1, 1975 to January 1, 1977 | 116% |
| April 1, 1977 to January 1, 1980 | 119% |
| April 1, 1980 to January 1, 1985 | 122% |

The term "Base Rate" means the rate per annum charged from time to time by First National City Bank of New York for 90-day loans to substantial and responsible commercial borrowers of the highest credit standing.

The Vendee shall have the privilege of prepaying its indebtedness hereunder in whole or in part (in multiples of \$100,000), at any time without penalty or premium, and each prepayment shall be applied to reduce installments in inverse order of maturity thereof. The Vendee shall pay simultaneously with any prepayment pursuant to this paragraph all unpaid interest, if any, upon the principal amount then to be prepaid, but only to the extent accrued to the date of prepayment.

The obligations of the Vendee in respect of the portions of the aggregate Purchase Price (but not interest thereon) payable above are herein sometimes called the Conditional Sale Indebtedness and each such date of payment thereof is hereinafter called a Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest, to the extent legally enforceable, at the rate of three-fourths of one percent ($\frac{3}{4}$ of 1%) over the applicable rate of interest set out in section 2(b) of the third paragraph of this Third Article payable under and as determined in this Article 3 on all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. The Vendee will make payments in immediately available funds to the Vendor upon the written request of the Vendor; provided that following the assignment referred to in the following paragraph, payment of the Conditional Sale Indebtedness shall be made in immediately available funds to the principal office of said assignee or as said assignee shall otherwise direct in writing.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that an amount equal to the Purchase Price for the Equipment shall be paid to the Builder by an assignee of the Builder's right, security title and interest under this Agreement pursuant to an Agreement and Assignment between the Builder and First National City Bank (such Agreement and Assignment being hereinafter called the Assignment and First National City Bank being herein called the Assignee or the Vendor as indicated in Article 24 hereof).

ARTICLE 4. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Guarantor as provided in this Agreement. Any and all additions to the Equipment (except, in the case of any unit of the Equipment which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such unit by the Guarantor, the cost of which is not included in the Purchase Price of such unit and which are not required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, including, without limitation, the Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a)

execute a bill of or bills of sale (without recourse or warranty whatsoever except for Vendor's own acts), for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 6 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 5. Taxes. All payments to be made by the Vendee hereunder will be free of expenses to the Builder for collection or other charges and will be free of expense to the Builder with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon receipt of such payments, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties and all payments to be made by the Vendee hereunder will be free of expenses to the Vendor for collection or other charges and will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than the following taxes levied on the interest income of the Vendor hereunder: net income taxes, franchise taxes measured by net income based upon the receipt of such payments, excess profits taxes and other similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its security title therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security title of the Vendor or result in a lien upon any

part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions, the Vendee has notified the Vendor of such legal proceedings, and the non payment thereof does not, in the opinion of the Vendor, adversely affect the security title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. Maintenance and Repair; Casualty Occurrences; Insurance. The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair, and that if a replacement of power components (such as engines, transmissions and parts thereof) is required, such replacement shall be in accordance with the manufacturer's specifications for such Equipment.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed (which includes units that have been on Bad Order [i.e., not maintained or repaired in accordance with standards prescribed by the manufacturer of such units in its applicable service manuals and maintenance instructions] for a continuous period in excess of six months), or, in the reasonable opinion of the Vendee or the Guarantor, irreparably damaged from any cause whatsoever, or taken or requisitioned by condemnation or otherwise for a definite term exceeding the period ending January 1, 1985 (such occurrences being herein called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price, together with interest thereon and all other payments required thereby, the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. When the aggregate Casualty Value (as herein defined) of Equipment having suffered a Casualty Occurrence (exclusive of Equipment having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 6) hereunder shall exceed \$100,000, the Vendee, within 30 days of such event, shall

have the option either of paying to the Vendor a sum equal to the aggregate Casualty Value of such units as of the date of such payment or of replacing the Equipment having suffered a Casualty Occurrence hereunder with other rolling stock (not passenger or work cars) having a value equal to the net depreciated book value of the Equipment having suffered a Casualty Occurrence. Title to such equipment substitutions for units suffering a Casualty Occurrence shall be vested in Vendor free from all liens and encumbrances, and shall be subject to all the terms and conditions of this Agreement in all respects as though part of the original equipment herein described. When the aggregate Casualty Value of Equipment having suffered a Casualty Occurrence does not exceed \$100,000, such amount shall be aggregated and paid on an annual basis which shall be established by the Vendor. Any money paid to the Vendor pursuant to this paragraph or received as the proceeds of insurance required by the fifth paragraph of this Article 6 shall be applied on the date that such Casualty Value is paid to prepay the Conditional Sale Indebtedness in respect of such unit or units having suffered a Casualty Occurrence.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer to action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's rights, title and interest in such unit, in recordable form in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price of such unit of Equipment suffering a Casualty Occurrence remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofor made under this Article 6), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Guarantor will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Guarantor on equipment owned by it.

It is further understood and agreed that any fire and extended coverage insurance proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article 6. If the Vendor shall receive any other fire and extended coverage insurance proceeds in respect of insurance carried in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article 6 without deduction for such insurance proceeds, the Vendor shall pay such insurance proceeds to the Vendee. All proceeds of fire and extended coverage insurance received by the Vendor in respect of insurance carried on any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

In the event that prior to January 1, 1985, the use of any unit of the Equipment is requisitioned or taken by any governmental authority by condemnation or otherwise for a period ending on or before said date or for an indefinite period, the Vendee's duty to pay the Conditional Sale Indebtedness, together with interest accrued thereon, shall continue for the duration of such requisitioning or taking. The Vendee shall be entitled to receive and retain for its

own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

ARTICLE 7. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of the Purchase Price of the Equipment and interest thereon, and the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement will be promptly paid when due, together with interest thereon as herein provided, at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder, provided, however, that if the Guarantor shall be required by this Article 7 to pay any portion of the unpaid indebtedness with respect to the Purchase Price of the Equipment, or any interest thereon, which shall become due and payable as the result of a Declaration of Default (as defined in Article 15 hereof) and if such Declaration of Default shall not result from any act or any failure or omission to act on the part of the Guarantor hereunder or under the Sublease, the Guarantor shall pay such amount upon such Declaration of Default.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Guarantor hereby waives diligence, presentment, demand of payment and protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

The Guarantor hereby covenants and agrees with the Vendor for the benefit of the Vendor, faithfully to observe all the terms, covenants and conditions set forth in the Sublease, it being agreed that the undertakings of the Guarantor pursuant to the Sublease shall be deemed a part of this Agreement with the same force and effect as if set forth herein in full. The obligations of the Guarantor under the provisions of the preceding sentence shall not be affected by any termination of the Sublease or the invalidity thereof, as between the Lessee and the Guarantor, for any reason but shall continue as though the Sublease continued in full force and effect until the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon, shall have been paid in full.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights by subrogation or otherwise against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; provided, however, that after the payment to the Vendor of all sums payable under this Agreement, the Guarantor shall by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of payment by the Guarantor to the extent, but only to the extent, that the Guarantor has been required to make payment under this Article 7 by reason of a default of the Vendee which is not caused by a default of the Guarantor as Sublessee under the Sublease, and in such event the Vendor's title to and property in the Equipment, and all of the Vendor's rights and interests under this Agreement and any other security interests in the Equipment, shall pass to and vest in the Guarantor, without further transfer or action on the part of the Vendor, except that the Vendor will execute and deliver to the Guarantor, at the expense of the Guarantor, an appropriate instrument confirming such passage to the Guarantor of all the Vendor's right, title and interest in the Equipment, the Vendor's rights and interests under this Agreement and any other security interests in the Equipment, in recordable form, in order that the Guarantor may make clear upon the public records the title of the Guarantor in the Equipment.

ARTICLE 8. Reports and Inspections. On or before April 15 and October 15 in each year, commencing on April 15, 1975, and continuing until all obligations of the Vendee under this Agreement shall be discharged, the Vendee shall cause to be furnished to the Vendor an accurate statement signed by an officer of the Vendee (a) setting forth the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding six months (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced, and (c) a statement showing the condition of the remaining equipment in actual service as of the reporting date. The Vendor shall have the right, by its agents, to inspect the Equipment and the Guarantor's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement. Vendee will provide a Schedule of Depreciation in Annex A.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's security title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Guarantor or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Guarantor or its affiliates to use the Equipment as permitted under the Lease and Sublease.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee, sublessee or user of the Equipment to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee and the Lessee may sublease the Equipment to the Guarantor, all as permitted by, and for use as provided in, the Lease or the Sublease, as the case may be, but the Lease and the Sublease shall each be subordinate and junior in rank to the rights, and shall be subject to the remedies of the Vendor under this Agreement; provided, however, that so long as the Lessee or the Guarantor shall not be in default under the Lease or Sublease respectively or the Guarantor shall not be in default under this Agreement in its capacity as Guarantor or otherwise, the Lessee and the Sublessee shall be entitled to the possession and use of the Equipment. The Vendee hereby agrees that it will not exercise any remedy permitted in the case of an Event of Default provided in the Lease nor permit the Lessee to exercise any remedy provided in the Sublease unless the Vendor shall consent in writing to the initiated exercise thereof; and the Vendee hereby further agrees to furnish or cause to be furnished to the Vendor copies of all summons, writs, processes and other documents served by the parties to the Lease and the Sublease upon each other.

So long as an event of default in Article 15 hereof shall not have occurred and be continuing, the Vendee shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Guarantor either alone or jointly with another and whether under lease or otherwise,

and upon the lines of the railroad owned or operated by a railroad company controlled by, or under common control with, the Guarantor over which the Guarantor has trackage or other operating rights, and the Equipment may be used upon connecting and other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement. The Vendee may also lease, and the Lessee may sublease, the Equipment to any other railroad company with the prior written consent of the Vendor; provided, however, that (1) such lease shall provide that the rights of such Lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and (ii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner, the Vendor has been notified by the Vendee of such legal proceedings and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the

operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains in the Vendor or the transfer of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, as to the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness hereunder, plus interest thereon as provided hereon, and the conveyance of security title to, the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder warrants to the Vendee and the Guarantor that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 1 hereof, and is suitable for the ordinary purposes for which the Equipment is used, and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. The Builder agrees to correct such defects, which examination shall disclose to the Builder's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of the Builder's obligation with respect to such defect under this Warranty.

The Builder warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Builder.

There are no warranties with respect to material and workmanship, expressed or implied, made by the Builder except the warranties set out above.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 2 hereof nor any examination nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Article 13.

Except in cases of articles or materials specified by the Vendee or the Guarantor and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and the Guarantor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee or the Guarantor or their assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Vendee likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Vendee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Vendee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Guarantor likewise will indemnify, protect and hold harmless the Vendor and the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Vendee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula or combination specified by the Guarantor and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. In case any of the Equipment is held to constitute infringement of any patent or other similar right in respect of which liability may be charged against the Builder and the use of any of the Equipment is enjoined, the Builder shall, at its own expense, and at its option, either procure for the Vendee and the Guarantor the right to continue using such Equipment or replace the same with non-infringing equipment or modify it so it becomes non-infringing. The Builder agrees to and hereby does,

to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee and the Guarantor every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Vendee or the Guarantor and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee or the Guarantor all and every such further assurance as may be reasonably requested by the Vendee or the Guarantor more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Vendee and the Guarantor of any claim known to the Builder from which liability may be charged against the Vendee or the Guarantor hereunder and the Vendee and the Guarantor will give notice to the Builder and the Vendor of any claim known to them from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under the Agreement, the satisfaction and discharge of the Agreement or the termination of the Agreement in any manner.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Guarantor) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement, and (iii) written notice of such transfer identifying such transferee and the address thereof shall be given to the Guarantor and the Vendor, and thereafter such transferee shall be the Vendee hereunder. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, powers, privileges, immunities, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee

at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof, or relieve the Vendee or the Guarantor of their respective obligations to the Builder contained or referred to in Articles 1, 2, 3, 5, 7 and 13 hereof and this Article 14, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, security title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire Conditional Sale Indebtedness, plus interest thereon as provided herein, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Guarantor, as the case may be, against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor of security title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Vendee will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the security title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Vendee and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Vendee and the Guarantor will (a) in connection with settlement for the Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date with respect to such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts or copies of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive on each Closing Date a sum equal to the aggregate Purchase Price in respect of all of the Equipment proposed to be settled for on such Closing Date, the Builder will promptly notify the Vendee and the Guarantor of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment whose aggregate Purchase Price shall not have been received, and the Guarantor will, not later than 90 days after such Closing Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the highest prime rate of interest of leading Chicago banks in effect on such Closing Date.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee) and such default shall continue for five days; or

(b) The Vendee or the Guarantor shall, for more than 25 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Vendee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Guarantor or the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or the Guarantor under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended or replaced, shall be filed by or against the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default (hereinafter called "Event of Default") the Vendor may, upon written notice to the Vendee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee and Sublessee set forth in Article 11 hereof, cause the Lease and/or Sublease immediately upon such notice to terminate (and the Vendee and the Guarantor each acknowledge the right of the Vendor to terminate the Lease and Sublease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 3 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee or the Guarantor wherever situated. The Vendee or the Guarantor, as the case may be, shall promptly notify the Vendor in writing of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an Event of Default under this Agreement.

The Vendor may, at its election, waive any such Event of Default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease and/or Sublease by notice to the Vendee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Event of Default had occurred and no Declaration of Default or notice of termination of the Lease and/or Sublease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee

and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee and Sublessee set forth in Article 11 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee and Guarantor or any other person and for such purpose may enter upon the premises of the Vendee or the Guarantor or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Guarantor, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall (subject to the rights of the Lessee and Sublessee set forth in Article 11 hereof) at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Guarantor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Guarantor requiring specific performance hereof. The Vendee and the Guarantor hereby expressly waive any and all claims against the Vendor

and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Guarantor by Telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Guarantor or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Guarantor and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the

Lessee and Sublessee set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Guarantor or any other party claiming from, through or under the Vendee or the Guarantor at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly

granted to the Vendee or the Guarantor shall not otherwise alter or affect the Vendor's rights or the Vendee's or the Guarantor's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid including, but not limited to, repayment of all proper advances made by Vendor, the expenses of repossession and sale, taxes, Vendor's attorney fees and the like, second to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and third to the payment of the unpaid Purchase Price of the Equipment

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice

of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Guarantor will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act, and the Vendee and the Guarantor will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee and the Guarantor will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment, except fees and expenses incurred in connection with the recording pursuant to Article 18 hereof of this Agreement and the first assignment of this Agreement, which shall be paid by the Guarantor.

ARTICLE 20. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supercedes all other agreements, oral or written, with respect to the

Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Guarantor.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at address specified below:

(a) to the Vendee, c/o North Western Leasing Company, 400 West Madison Street, Chicago, Illinois 60606, Attention: Secretary, with a copy to the Guarantor,

(b) to the Guarantor, at 400 West Madison Street, Chicago, Illinois 60606, Attention: Vice President-Finance,

(c) to the Builder, at La Grange, Illinois 60525,

(d) to any assignee of the Builder, or to any transferee of the Vendee's interest hereunder pursuant to the second paragraph of Section 11 hereof, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendee, the Guarantor or the Builder (including the Vendor or any party having an interest in the rights of the Vendor hereunder), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 6 and under Articles 8, 9, 10, 12, 13 and 18 hereof shall be deemed in all respects satisfied by the satisfaction of the Lessee's undertakings contained in the second paragraph of Section 11 and in Sections 4, 7, 8, 9 and 14 of the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Lessee's failure to cause to be performed such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the satisfaction of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of April 15, 1974, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

ARTICLE 26. Financial and Other Information of Vendee and Guarantor.
So long as any Conditional Sale Indebtedness shall be unpaid, the Vendee and the Guarantor will deliver to the Vendor:

(a) As soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Vendee and the Guarantor as at the end of such period and a statement of income and retained earnings of the Vendee and the Guarantor for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, all in reasonable detail and certified by the chief financial officer of the Vendee and the Guarantor;

(b) As soon as available and in any event within 120 days after the last day of each fiscal year, a copy of the Vendee's and the Guarantor's annual report to stockholders, including balance sheet, income statement and statement of retained earnings of the Vendee and the Guarantor, certified by such firm of independent public accountants of recognized standing as is selected by the Vendee and the Guarantor covering the operations of the Vendee and the Guarantor.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

GENERAL MOTORS CORPORATION
(ELECTRO MOTIVE DIVISION)

BY Harold J. Smith
VICE PRESIDENT

ATTEST:

W. D. Scott
ASSISTANT SECRETARY

NORTH WESTERN LEASING COMPANY

BY Richard M. Coleman
Vice President

ATTEST:

G. L. Wargason

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

BY J. M. Butler
Vice President

ATTEST:

G. L. Wargason

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On the 5th day of Sept., 1974, before me personally appeared MARCID L. SMITH, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



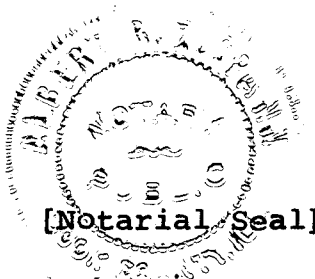
Zula C. Clair
Notary Public

[Notarial Seal]

My Commission Expires JULY 12, 1976

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 5th day of September, 1974, before me personally appeared RICHARD M. FREEMAN, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of North Western Leasing Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Albert R. Zuspamm
Notary Public

ALBERT R. ZUSPANN

Notary Public

Cook Co. Illinois

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 5th day of Sept., 1974, before me personally appeared J. M. Butler, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledge that the execution of the foregoing instrument was the free act and deed of said corporation.

L. M. Jupp.
Notary Public

[Notarial Seal]

My Commission Expires Sept. 29, 1977.

ANNEX A

| <u>Type</u> | <u>Quantity</u> | <u>Specifi- cations</u> | <u>Manufacturer's Plant</u> | <u>Road Numbers (both inclusive)</u> | <u>Unit Base Price*</u> | <u>Total Base Price</u> | <u>Delivery</u> |
|----------------------------|-----------------|-----------------------------|---------------------------------|--|---------------------------------|-----------------------------|----------------------|
| Model SD 40-2 3000 H.P. | 25 | 8087 | LaGrange, Illinois | 6866 to 6890 | \$374,142 | \$9,353,550.00 | Prior to 12-31-74 |

The first month following a closing the locomotives will be depreciated monthly in accordance with I.C.C. rules at an annual rate of 4.63%.

*Unit base price includes \$288.00 per unit prepaid freight and \$9,615.00 for train control equipment.

AGREEMENT AND ASSIGNMENT dated as of April 15, 1974 between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) (hereinafter called the Builder), and FIRST NATIONAL CITY BANK (hereinafter called the Assignee).

WHEREAS, the Builder, NORTH WESTERN LEASING COMPANY (hereinafter called the Vendee) and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (hereinafter called the Guarantor) have entered into the Conditional Sale Agreement dated as of the date hereof annexed hereto and made a part hereof (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called the Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto do hereby agree as follows:

SECTION 1. Assignment by Builder. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Builder in and to each unit of the Equipment;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph of Article 3 thereof, in the last paragraph of Article 14 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the Conditional Sale Indebtedness (as defined in the Conditional Sale

Agreement) and interest thereon, and in and to any other sums becoming due from the Vendee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, power, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Article 13 of the Conditional Sale Agreement or relieve the Vendee or the Guarantor from their respective obligations to the Builder contained in Articles 1, 2, 3, 5, 7, 13, and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Covenants and Agreements of Builder. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional

Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, the rights of Allied Products Finance Corporation (hereinafter called Allied) under the Lease and the rights of the Guarantor under the Sublease (as defined in the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of Vendee and the Guarantor thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement, the Lease and the Sublease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from counsel of the Guarantor that such filing and recordation have occurred).

SECTION 3. Builder's Indemnities. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) or interest thereon or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the

Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Guarantor and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Guarantor with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. Equipment Markings. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

"FIRST NATIONAL CITY BANK - SECURITY OWNER".

SECTION 5. Conditions Precedent to Payment by Assignee.
(a) Payments on Closing Dates. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement

with respect to the Equipment, shall pay to the Builder an amount equal to the portion of the purchase price thereof, which under the terms of said Article 3, is payable in installments under subparagraph (1) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 14 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment then being settled for under the Conditional Sale Agreement warranting to the Assignee and to the Vendee that at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to, and good and lawful right to sell, such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the right of the Vendee under the Conditional Sale Agreement, the rights of Allied under the Lease and the rights of the Guarantor under the Sublease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 4 of the Conditional Sale Agreement and a Certificate or Certificates of Delivery with respect to such units as contemplated by Section 2 of the Lease and the Sublease;

(c) A certificate of an officer of Allied and the Guarantor to the effect that none of the units of the Equipment was placed in the service of Allied or the Guarantor or otherwise was used by Allied or the Guarantor prior to delivery and acceptance of such units under the Conditional Sale Agreement, the Lease and the Sublease;

(d) An invoice of the Builder addressed to the Assignee for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Guarantor as to the correctness of the prices of such units;

(e) An opinion of counsel for the Vendee as of such Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Vendee and is a legal, valid and binding instrument enforceable against the Vendee in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and (assuming its due authorization, execution and delivery by the Assignee and its enforceability against the Assignee) is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) the Assignee is vested with all the right, title, interest, powers and privileges of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, (iv) title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement, the rights of Allied under the Lease and the rights of the Guarantor under the Sublease), (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or the District of Columbia.

(f) An opinion of counsel of the Guarantor, dated as of such Closing Date and addressed to the Vendee as well as the Assignee, to the effect set forth in clauses (i), (ii), (iii), (iv), (v) and (vi) of subparagraph (e) above insofar as they relate to the Guarantor and stating that the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(g) An opinion of counsel for the Builder dated as of such Closing Date stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Builder and each is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment and (iv) title to the units of the Equipment in such Group has been validly vested in the Assignee, and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free of all claims, liens, security interests and encumbrances except only the rights of the Vendee under the Conditional Sale Agreement (other than those created by the Conditional Sale Agreement, the rights of Allied under the Lease and the rights of the Guarantor under the Sublease);

(h) Copies, certified by the Secretary or Assistant Secretary of the Guarantor, of resolutions adopted by the Board of Directors of the Guarantor concerning authorization for the execution and the guarantee of the transactions contemplated by the Conditional Sale Agreement; and

(i) A certificate of incumbency from the Vendee and the Guarantor showing that the respective officer signing the Conditional Sale Agreement is legally authorized to do so.

(j) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 5) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In giving the opinions specified in the subparagraphs (e), (f) and (g) of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (e) and (f), counsel may rely as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of Counsel for the Builder.

(b) Excluded Equipment. It is understood and agreed that Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

SECTION 6. Further Assignments. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Guarantor thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. Representations of Builder; Further Assurances.
The Builder hereby:

(a) represents and warrants to the Assignee its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee and the Guarantor, the Conditional Sale Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments or assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. Execution in Counterparts. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of April 15, 1974, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

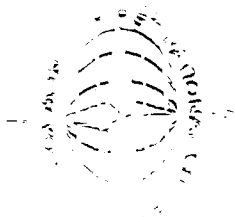


GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By Harold J. Amory
VICE PRESIDENT

ATTEST:

W. H. Scott
Assistant Secretary



FIRST NATIONAL CITY BANK

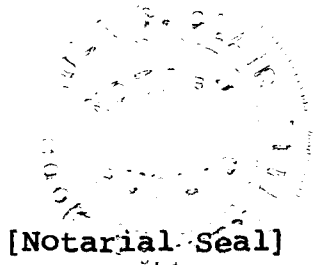
By CE [Signature]
VICE PRESIDENT

ATTEST:

Charles T. Sager
Account Officer

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On the 5th day of Sept, 1974, before me personally, appeared HAROLD L. SMITH, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Notarial Seal]

Zula C. Clair
Notary Public

My Commission Expires JULY 11, 1976

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

On this 9 day of Sept, 1974, before me personally appeared Barnaby Blatch, to me personally known, who, being by me duly sworn, says that he is Vice President of THE FIRST NATIONAL CITY BANK OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Notarial Seal]

My Commission Expires March 30, 1975

Patrick A. Walsh
Notary Public

PATRICK A. WALSH
Notary Public, State of New York
No. 24-4144415
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1975

NORTH WESTERN LEASING COMPANY and CHICAGO AND
NORTH WESTERN TRANSPORTATION COMPANY hereby acknowledge
due notice of the assignment made by the foregoing
Agreement and Assignment.

NORTH WESTERN
LEASING COMPANY

By Richard M. Johnson
Its Vice President

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By McButtle
Its Vice President

CHICAGO AND



TRANSPORTATION COMPANY

ROBERT D. SMITH
SECRETARY

E. C. MARQUARDT
G. L. VARGASON
ASSISTANT SECRETARIES

October 2, 1974

File No.: A-9213

REGISTERED MAIL
Interstate Commerce Commission
Washington, D.C. 20423

Attention: Mr. Robert L. Oswald, Secretary

Gentlemen:

RE: Conditional Sale Agreement between General Motors Corporation (Electro-Motive Division), North Western Leasing Company and Chicago and North Western Transportation Company AND Agreement and Assignment between General Motors Corporation (Electro-Motive Division), Assigner, and First National City Bank, Assignee. Acknowledged by North Western Leasing Company (Vendor) and Chicago and North Western Transportation Company (Guarantor). Covering 25 3000 H.P. SD 40-2 Diesel Electric Locomotives, CNW Nos. 6866 to 6890.

Please refer to the above-mentioned documents assigned Recordation No. 7642 and recorded with the ICC on September 9, 1974 at 4:50 P.M., pursuant to Section 20c of the Interstate Commerce Act, as amended and also Mr. G. L. Vargason's letter to you of September 12, 1974 relative to filing of Annex B and Annex C of the above agreement.

Your offices obviously recorded the Annex B as 7642-A and Annex C as 7642-B; however, your official stamp of date, time and recordation number were not marked on our copies, (Counterparts 3 of 6 to 6 of 6 enclosed), of Annex C. Please mark the enclosed copies with your official stamp as per copies of receipt attached. Thank you.

Very truly yours,

Diane Kohler-Rausch,
Staff Analyst

DKR:ym

Enclosure

cc: Robert D. Smith

RECEIVED
OCT 3 1974
FEE OPERATION BR.
I.C.C.

RECEIVED

OK (10-7-74)
BEE